UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

WAYNE S. SMITH, Plaintiff, vs. CHRIS NELSON in his official capacity as Secretary of State of South Dakota, MIKE MILSTEAD in his official capacity as Minnehaha County Sheriff, Defendants.	)	Civ. 11-4001 AMENDED SEPARATE ANSWER AND CROSS CLAIM OF DEFENDANT MIKE MILSTEAD, IN HIS OFFICIAL CAPACITY AS MINNEHAHA COUNTY SHERIFF

Defendant Mike Milstead, in his official capacity as Minnehaha County Sheriff, for his Separate Answer to the Complaint of Plaintiff, states and alleges as follows:

1.

Said Complaint fails to state a claim upon which relief may be granted against this Defendant.

2.

Denies each and every allegation, matter and thing contained in the Complaint, except as is hereinafter specifically admitted.

3.

Answering paragraphs 1, 6 and 7, states the contents of those paragraphs are conclusory/legal statements, not requiring answer; but if the allegations of these paragraphs, or any of them, purport or claim to determine legal issues involved in this action, denies same, and remits Plaintiff his strict proof thereon.

4.

Admits paragraphs 2-5, and 8-10.

5.

Answering paragraphs 11-18 and 23-24, states the allegations are argumentative, denies same, and remits Plaintiff to his strict proof thereon.

6.

Answering paragraph 19, agrees a controversy exists.

7.

Answering paragraph 20, agrees a declaration from this Court would settle this issue.

8.

Answering paragraph 21, agrees a declaration would also serve a useful purpose in clarifying the legal issues in dispute.

9.

Answering paragraph 22, admits Plaintiff is seeking a declaration that the referenced statute is unconstitutional.

10.

To the extent not stated or denied in the foregoing provisions of this Answer, denies Plaintiff is entitled to any relief against this Defendant.

11.

Further answering the Complaint, alleges this Defendant and those within his office were carrying out and enforcing provisions of South Dakota Law, as required by statute.

12.

Further answering the Complaint, alleges that if Plaintiff is entitled to any relief, which is denied, the relief is to be had from other persons, parties or entities not in privity with this Defendant.

13.

This Defendant is immune from suit based on immunity.

14.

This Defendant is immune from suit based on qualified immunity.

15.

This Defendant is immune from suit based on sovereign and governmental immunity to the extent of any State law claims.

16.

This Defendant neither has nor had any intent, purpose, or deliberate indifference on his part to deny Plaintiff his constitutional or statutory rights, or any rights alleged to have been deprived of him by the Complaint; and Plaintiff is barred from any relief thereon.

WHEREFORE, Defendant Mike Milstead prays that the Complaint against him be dismissed on the merits, with prejudice, and that he have and recover his costs and disbursements, along with such other and further relief the Court determines to be proper.

CROSS-CLAIM

Defendant Milstead, for his Cross-Claim against Defendant Nelson, states and alleges as follows:

17.

Re-alleges all matters set forth in his Answer and Amended Answer, as if fully set forth herein.

18.

In acting on Plaintiff's application, Defendant and his staff relied on existing and applicable South Dakota statutes, which by law, this Defendant and his staff are obligated to fulfill and follow.

19.

If the Plaintiff is entitled to any relief, which is denied, Defendant Milstead is entitled to a judgment of complete indemnity for any amounts or relief adjudged against him, from Defendant Nelson.

20.

Alternatively, if Plaintiff is entitled to any relief against this Defendant, which is denied, and a judgment of complete indemnity is denied, Defendant Milstead is entitled to a judgment of contribution against Defendant Nelson, for the proportion of wrong Nelson is proven to have committed.

WHEREFORE, Defendant Mike Milstead prays for judgment on his Cross-Claim against Defendant Nelson, for a judgment of complete indemnity, or in the alternative, for a judgment of contribution; along with his costs, disbursements, attorney fees, and such other and further relief the Court determines to be proper.

Dated at Sioux Falls, South Dakota, this 26th day of January, 2011.

CADWELL SANFORD DEIBERT & GARRY LLP

By s/Douglas M. Deibert

Douglas M. Deibert
200 East 10th Street - Suite 200
P.O. Box 2498
Sioux Falls, SD 57101
(605) 336-0828
One of the Attorneys for
Defendant Mike Milstead
ddeibert@cadlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the AMENDED SEPARATE ANSWER AND CROSS-CLAIM OF DEFENDANT MIKE MILSTEAD, IN HIS OFFICIAL CAPACITY AS MINNEHAHA COUNTY SHERIFF with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following counsel:

Robert Doody	rdoody@aclu.org
Andrew Knecht	aknecht@aclu.org
Martin J. Jackley	Marty.jackley@state.sd.us
Bobbi J. Rank	Bobbi.Rank@state.sd.us
Richard M. Williams	Rich.Williams@state.sd.us

Dated at Sioux Falls, South Dakota, this 26th day of January, 2011.

s/Douglas M. Deibert

Douglas M. Deibert